

10 Attorneys for
11 Defendant Balbir Singh dba West Valley Cab Co.

12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN JOSE DIVISION

16 CERTAIN UNDERWRITERS AT LLOYD'S,
17 LONDON,

18 Plaintiffs,

19 vs.

20 BALBIR SINGH individually and dba WEST
21 VALLEY CAB; DHARAM SINGH, and
22 individual; ANIL SOOD, an individual and
23 dba AASK INSURANCE SERVICES;
24 MICHAEL and ALICE SHERBURNE,
25 individuals; and THAC DINH TE, and
26 individual,

27 Defendants.

Case No. CV 04-00021 JF

ANSWER OF DEFENDANT, BALBIR
SINGH, an individual and dba WEST
VALLEY CAB; TO PLAINTIFF'S
COMPLAINT FOR DECLARATORY
RELIEF; FRAUD; RECISSION, or in the
alternative, REFORMATION;
NEGLIGENCE; and UNFIAR
COMPETITION

28 Defendant BALBIR SINGH individually and dba WEST VALLEY CAB CO.,
(hereinafter "defendant") answers the Complaint of the Plaintiff herein as follows:

1. As to Paragraph 1 of the Complaint, Defendant admits that CERTAIN
UNDERWRITERS is seeking a Declaration from the court as to the rights and duties of the
parties under a Commercial Business Auto Certificate, Number LTX02040253 ("the policy").

Defendant admits that CERTAIN UNDERWRITERS seeks rescission of an endorsement to the policy, and also asks the Court to determine that they have no duty to defend or indemnify defendants BALBIR SINGH or DHARAM SINGH against liability for claims arising out of a certain automobile accident; that defendants BALBIR SINGH, DHARAM SINGH and ANIL SOOD committed fraud by concealing the existence of an accident that had occurred hours before they applied to add DHARAM SINGH and his vehicle to an existing insurance policy; that defendants BALBIR SINGH, DHARAM SINGH and ANIL SOOD furthered this fraud by failing to reveal the existence of this accident after the endorsement adding DHARAM SINGH'S vehicle to the policy was issued retroactive to the date of the accident; that defendants BALBIR SINGH, DHARAM SINGH, and/or ANIL SOOD are obligated to reimburse UNDERWRITERS for any sums paid by UNDERWRITERS to defendants or to underlying claimants as the result of claims arising out of the automobile accident; that ANIL SOOD is liable in damages as the result of his intentional or negligent failure to disclose the existence of the accident, either before or after applying to add DHARAM SINGH and his vehicle to the existing insurance policy; and that ANIL SOOD engaged in unfair competition, and is liable to Plaintiff for restitution, costs, and attorneys fees. Defendant denies that UNDERWRITERS is entitled to rescission of an endorsement to the policy. Defendant denies that UNDERWRITERS has no duty to defend or indemnify defendants BALBIR SINGH or DHARAM SINGH against liability for claims arising out of a certain automobile accident. Defendant denies that BALBIR SINGH, DHARAM SINGH, and/or ANIL SOOD committed fraud by concealing the existence of an accident that had occurred hours before they applied to add DHARAM SINGH and his vehicle to an existing insurance policy. Defendant denies that BALBIR SINGH, DHARAM SINGH, and/or ANIL SOOD furthered any fraud by failing to reveal the existence of this accident after the endorsement adding DHARAM SINGH'S vehicle to the policy was issued retroactive to the date of the accident. Defendant BALBIR SINGH denies that he, DHARAM SINGH, and/or ANIL SOOD are obligated to reimburse UNDERWRITERS for any sums paid by UNDERWRITERS to defendants or to underlying

1 claimants as the result of claims arising out of the automobile accident. Defendant denies, based
2 on lack of information or belief, that ANIL SOOD is liable in damages as the result of his
3 alleged intentional or negligent failure to disclose the existence of the accident, either before or
4 after applying to add DHARAM SINGH and his vehicle to the existing insurance policy; and
5 that ANIL SOOD engaged in unfair competition, and is liable to Plaintiff for restitution, costs,
6 and attorneys fees.

7 2. Defendant is informed and believes, and based upon such information and belief,
8 admits the allegations in paragraph two of the Complaint.

9 3. Defendant BALBIR SINGH admits that he is an individual who once did business as
10 West Valley Cab. Defendant BALBIR SINGH admits that he owned some taxi cabs, and had
11 contracts with independent contractors which allowed them to both to drive his cabs as well as
12 their own owned cabs under the name "West Valley Cab". Defendant BALBIR SINGH admits
13 that "West Valley Cab" had offices in Sunnyvale, California at the time of the accident giving
14 rise to the underlying claims. Defendant BALBIR SINGH denies that he is now or ever was a
15 resident of Sunnyvale, California. Defendant BALBIR SINGH admits that he was the Named
16 Assured on the policy.

17 4. Defendant BALBIR SINGH admits that DHARAM SINGH is an individual.
18 Defendant BALBIR SINGH admits that DHARAM SINGH owned and operated a single taxi
19 cab at the time of the accident giving rise to the underlying claims. Defendant BALBIR SINGH
20 denies that DHARAM SINGH'S cab was operated in the Sunnyvale, California area at the time
21 of the accident giving rise to the underlying claims. Defendant BALBIR SINGH is informed
22 and believes, and based on such information and belief, admits that DHARAM SINGH is a
23 resident of San Jose, California.

24 5. Defendant BALBIR SINGH admits the allegations of paragraph five of the
25 Complaint.

26 6. Defendant BALBIR SINGH has no information or belief sufficient to enable him to
27 answer the allegations of paragraph six of the Complaint, and thereby denies said allegations on
28

1 those grounds.

2 7. Defendant is informed and believes, and based upon such information and belief,
3 admits the allegations in paragraph seven of the Complaint.

4 8. Defendant is informed and believes, and based upon such information and belief,
5 admits the allegations in paragraph eight of the Complaint.

6 9. Defendant is informed and believes, and based upon such information and belief,
7 admits the allegations in paragraph nine of the Complaint.

8 10. Defendant is informed and believes, and based upon such information and belief,
9 admits the allegations in paragraph ten of the Complaint.

10 11. Defendant is informed and believes, and based upon such information and belief,
11 admits the allegations in paragraph eleven of the Complaint.

12 12. Defendant is informed and believes, and based upon such information and belief,
13 admits the allegations in paragraph twelve of the Complaint.

14 13. Defendant is informed and believes, and based upon such information and belief,
15 admits the allegations in paragraph thirteen of the Complaint.

16 14. Defendant is informed and believes, and based upon such information and belief,
17 admits that the accident giving rise to the claims in this action took place on the evening of
18 October 28, 2002. Defendant denies that the only drivers listed on the "Scheduled Driver
19 Endorsement" included Harminder Singh (CA Drivers License No. B7218837), Vaisakhi Singh
20 (CA Drivers License No.D2679161), Avtar Singh (CA Drivers License No. D3538505) Baldip
21 Singh Sahota (CA Drivers License No. A9970625), BALBIR SINGH (CA Drivers License No.
22 A4480599), Joginder Singh Bal (CA Drivers License No. D3105522), Jorowar Singh (CA
23 Drivers License No. B7677741) and Kulwinder Singh (CA Drivers License No. B4415729), as
24 the endorsement adding DHARAM SINGH was made retroactive to the date of the accident.
25

26 15. Defendant is informed and believes, and based upon such information and belief,
27 denies the allegations in paragraph fifteen of the Complaint, as the endorsement adding
28 DHARAM SINGH's 1995 Plymouth van, Vehicle Identification Number 179990, was made

1 retroactive to the date of the accident.

2 16. Defendant BALBIR SINGH is informed and believes, and based upon such
3 information and belief, admits that an accident occurred at approximately 7:00 P.M. in Milpitas,
4 California, between a 1995 Plymouth van, vehicle number 179990, operated by defendant
5 DHARAM SINGH, a motorcycle, operated by MICHAEL SHERBURNE, and a car being
6 driven by THAC DINH TE. Defendant BALBIR SINGH is informed and believes, and based
7 upon such information and belief, admits that the accident occurred when defendant DHARAM
8 SINGH rear-ended MICHAEL SHERBURNE'S motorcycle, which in turn impacted the car
9 being driven by THAC DINH TE. Defendant BALBIR SINGH informed and believes, and
10 based upon such information and belief, admits that MICHAEL SHERBURNE suffered severe
11 injuries, and his motorcycle was totaled. Defendant BALBIR SINGH is informed and believes,
12 and based upon such information and belief, admits that MICHAEL SHERBURNE spent nearly
13 three months in the hospital as a result of the accident, and incurred over \$450,000.00 in medical
14 bills. Defendant BALBIR SINGH has no information or belief sufficient to enable him to admit
15 that Defendant TE has complained of soft tissue injuries, or that his vehicle was totaled, and
16 therefore denies the same.

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18 17. Defendant BALBIR SINGH has no information or belief sufficient to enable him to
19 admit that Defendant ANIL SOOD, dba AASK Insurance Services, sent a handwritten fax to
20 Underwriters' agent, requesting that the 1995 Plymouth van, vehicle number 179990, be added
21 to policy number LTXA02040253, or that the same fax note also asked that DHARAM SINGH,
22 Drivers License no. 3218726, be added as a driver, or that the note made no mention of the
23 accident which had taken place three and a half hours earlier, and therefore denies the same.

24 18. Defendant BALBIR SINGH has no information or belief sufficient to enable him to
25 admit that information obtained by the Plaintiff from the California Department of Motor
26 Vehicles revealed that the 1995 Plymouth van operated by DHARAM SINGH at the time of the
27 accident was registered to "Dharam Singh dba West Valley Cab", and that said registration was
28 filed on August 23, 2002, and therefore denies the same. Defendant BALBIR SINGH is

1 informed and believes, and based upon such information and belief, admits that DHARAM
2 SINGH was the owner of the vehicle at the time of the accident.

3 19. Defendant BALBIR SINGH has no information or belief sufficient to enable him to
4 admit that UNDERWRITERS' agent declined to add DHARAM SINGH to the policy because
5 the broker had not submitted a copy of Mr. SINGH'S motor vehicle record with the fax request.
6 Defendant BALBIR SINGH admits that UNDERWRITERS' agent did issue an endorsement
7 adding the 1995 Plymouth van, vehicle number 179990, to the "Covered Autos Limitation of
8 Use Endorsement" with an effective date of 10/28/02. Defendant BALBIR SINGH SINGH is
9 informed and believes, and based upon such information and belief, admits that said
10 endorsement is entitled "Endorsement PS 16-A". Defendant BALBIR SINGH is informed and
11 believes, and based upon such information and belief, admits that he did not inform
12 Underwriters or their agents that the accident had occurred. Defendant BALBIR SINGH has no
13 information or belief sufficient to enable him to admit that ANIL SOOD or DHARAM SINGH
14 informed Underwriters or their agents that the accident had occurred, and therefore denies the
15 same. Defendant BALBIR SINGH has no information or belief sufficient to enable him to
16 admit that had these defendants not concealed the fact that the 1995 Plymouth van had been
17 involved in an accident on 10/28/02, UNDERWRITER'S agent would not have issued an
18 endorsement retroactive to October 28, 2002, and therefore denies the same.

19
20 20. Defendant BALBIR SINGH admits that Mr. and Mrs. SHERBURNE have made
21 claims against BALBIR SINGH and DHARAM SINGH as a result of the accident of October
22 28, 2004. Defendant BALBIR SINGH has no information or belief sufficient to enable him to
23 admit that MR. TE has made a claim against BALBIR SINGH and DHARAM SINGH as a
24 result of the accident of October 28, 2004, and therefore denies the same. Defendant BALBIR
25 SINGH admits that Mr. and Mrs. SHERBURNE have filed an action for damages and loss of
26 consortium now pending in the Superior Court for the County of Santa Clara. Defendant
27 BALBIR SINGH admits that it is UNDERWRITERS' contention that they do not have
28 responsibility to cover any damages assessed against defendants as a result of the Accident.

1 Defendant BALBIR SINGH is informed and believes, and based upon such information and
 2 belief, admits that upon receipt of Mr. TE'S claim for property damage, UNDERWRITERS
 3 negotiated and settled the claim. Defendant BALBIR SINGH is informed and believes, and
 4 based upon such information and belief, admits that upon discovering that a lawsuit had been
 5 filed against BALBIR SINGH and DHARAM SINGH, UNDERWRITERS assumed the defense
 6 of DHARAM SINGH. Defendant BALBIR SINGH has no information or belief sufficient to
 7 enable him to admit that UNDERWRITERS has at all times reserved a right to withdraw the
 8 defense and deny indemnity based on a lack of coverage, and therefore denies the same.
 9 Defendant BALBIR SINGH admits that his defense was assumed by National Continental
 10 Insurance Company/Progressive Insurance Company.

11 21. Defendant repeats and re-alleges each and every admission, denial, and denial based
 12 on lack of information contained in paragraphs 1-20 as if fully set forth herein.

13 22. Defendant BALBIR SINGH has no information or belief sufficient to enable him to
 14 admit the allegations of paragraph 22, and therefore denies the same.

15 23. Defendant BALBIR SINGH has no information or belief sufficient to enable him to
 16 admit the allegations of paragraph 23, and therefore denies the same.

17 24. Defendant BALBIR SINGH has no information or belief sufficient to enable him to
 18 admit the allegations of paragraph 24, and therefore denies the same.

19 25. Defendant BALBIR SINGH has no information or belief sufficient to enable him to
 20 admit the allegations of paragraph 25, and therefore denies the same.

21 26. Defendant BALBIR SINGH has no information or belief sufficient to enable him to
 22 admit that after receiving copies of Endorsement PS 16-A with an effective date of 10/28/02,
 23 none of the defendants took steps to correct the result of their fraudulent communication, and
 24 therefore denies the same. Defendant BALBIR SINGH has no information or belief sufficient to
 25 enable him to admit that after receiving copies of Endorsement PS 16-A with an effective date of
 26 10/28/02, the defendants sought benefits under the endorsement, and therefore denies the same.
 27 Defendant BALBIR SINGH has no information or belief sufficient to enable him to admit that
 28

LAW OFFICES OF
CHOLAKIAN & ASSOCIATES
 A PROFESSIONAL CORPORATION
 5 THOMAS MELLON CIRCLE, SUITE 105
 SAN FRANCISCO, CALIFORNIA 94134

ANIL SOOD also subsequently communicated with UNDERWRITERS' agents seeking benefits under the endorsement, and questioning the application of the SIR to the subject claims, and therefore denies the same. Defendant BALBIR SINGH has no information or belief sufficient to enable him to admit that ANIL SOOD or DHARAM SINGH ratified fraudulent conduct of any kind, and therefore denies the same. Defendant BALBIR SINGH denies that he ratified fraudulent conduct of any kind.

27. Defendant BALBIR SINGH has no information or belief sufficient to enable him to admit that ANIL SOOD or DHARAM SINGH committed any fraudulent acts or admissions which resulted in damage to UNDERWRITERS, and therefore denies the same. Defendant BALBIR SINGH denies that he committed any fraudulent acts or admissions which resulted in damage to UNDERWRITERS.

28. Defendant repeats and re-alleges each and every admission, denial, and denial based on lack of information contained in paragraphs 1-27 as if fully set forth herein.

29. Defendant BALBIR SINGH has no information or belief sufficient to enable him to admit the allegations of paragraph 29, and therefore denies the same.

30. Defendant BALBIR SINGH has no information or belief sufficient to enable him to admit the allegations of paragraph 30, and therefore denies the same.

31. Defendant BALBIR SINGH has no information or belief sufficient to enable him to admit the allegations of paragraph 31, and therefore denies the same.

32. Defendant BALBIR SINGH has no information or belief sufficient to enable him to admit the allegations of paragraph 32, and therefore denies the same.

33. Defendant BALBIR SINGH has no information or belief sufficient to enable him to admit that after receiving copies of Endorsement PS 16-A with an effective date of 10/28/02, none of the defendants took steps to correct the result of their fraudulent communication, and therefore denies the same. Defendant BALBIR SINGH has no information or belief sufficient to enable him to admit that after receiving copies of Endorsement PS 16-A with an effective date of 10/28/02, the defendants sought benefits under the endorsement, and therefore denies the same.

1 Defendant BALBIR SINGH has no information or belief sufficient to enable him to admit that
2 ANIL SOOD also subsequently communicated with UNDERWRITERS' agents seeking benefits
3 under the endorsement, and questioning the application of the SIR to the subject claims, and
4 therefore denies the same. Defendant BALBIR SINGH has no information or belief sufficient to
5 enable him to admit that ANIL SOOD or DHARAM SINGH ratified fraudulent conduct of any
6 kind, and therefore denies the same. Defendant BALBIR SINGH denies that he ratified
7 fraudulent conduct of any kind.

8 34. Defendant BALBIR SINGH has no information or belief sufficient to enable him to
9 admit the allegations of paragraph 34, and therefore denies the same.

10 35. Defendant BALBIR SINGH denies the allegations of paragraph 35 of the
11 Complaint.

12 36. Defendant repeats and re-alleges each and every admission, denial, and denial based
13 on lack of information contained in paragraphs 1-20 as if fully set forth herein.

14 37. Defendant BALBIR SINGH denies the allegations of paragraph 37 of the
15 Complaint.

16 38. Defendant BALBIR SINGH admits that UNDERWRITERS is seeking an
17 adjudication of the respective rights, duties and obligations of the parties hereto with respect to
18 the issues raised by the claim for Declaratory Relief. Defendant BALBIR SINGH admits that
19 the court is vested with the power to declare and adjudicate the respective rights, duties, and
20 obligations of the parties hereto with respect to the issues raised by the claim for Declaratory
21 Relief. Defendant BALBIR SINGH denies that UNDERWRITERS has no obligation under the
22 policy, including Endorsement PS 16-A, to defend or indemnify DHARAM SINGH or BALBIR
23 SINGH in the underlying action or as against any claims related to the accident of October 28,
24 2002, and contends that such obligations do exist. Defendant BALBIR SINGH denies that
25 UNDERWRITERS is entitled to a declaration that it has no duty to defend or indemnify
26 DHARAM SINGH or BALBIR SINGH with relation to claims arising out of the accident of
27 October 28, 2004.
28

39. Defendant repeats and re-alleges each and every admission, denial, and denial based on lack of information contained in paragraphs 1-38 as if fully set forth herein.

40. Defendant BALBIR SINGH denies the allegations of paragraph 40 of the Complaint.

41. Defendant BALBIR SINGH denies the allegations of paragraph 41 of the Complaint.

42. Defendant BALBIR SINGH denies the allegations of paragraph 42 of the Complaint.

43. Defendant BALBIR SINGH denies the allegations of paragraph 43 of the Complaint.

44. Defendant BALBIR SINGH denies the allegations of paragraph 44 of the Complaint.

45. Defendant repeats and re-alleges each and every admission, denial, and denial based on lack of information contained in paragraphs 1-44 as if fully set forth herein.

46. Defendant BALBIR SINGH has no information or belief sufficient to enable him to admit the allegations of paragraph 46, and therefore denies the same.

47. Defendant BALBIR SINGH has no information or belief sufficient to enable him to admit the allegations of paragraph 47, and therefore denies the same.

48. Defendant BALBIR SINGH has no information or belief sufficient to enable him to admit the allegations of paragraph 48, and therefore denies the same.

49. Defendant BALBIR SINGH has no information or belief sufficient to enable him to admit the allegations of paragraph 49, and therefore denies the same.

50. Defendant BALBIR SINGH has no information or belief sufficient to enable him to admit the allegations of paragraph 50, and therefore denies the same.

51. Defendant repeats and re-alleges each and every admission, denial, and denial based on lack of information contained in paragraphs 1-50 as if fully set forth herein.

52. Defendant BALBIR SINGH has no information or belief sufficient to enable him to admit the allegations of paragraph 52, and therefore denies the same.

53. Defendant BALBIR SINGH has no information or belief sufficient to enable him to admit the allegations of paragraph 53, and therefore denies the same.

54. Defendant BALBIR SINGH has no information or belief sufficient to enable him to admit the allegations of paragraph 54, and therefore denies the same.

FIRST AFFIRMATIVE DEFENSE

55. Defendant BALBIR SINGH avers that even if found liable, that his degree of liability for the damages allegedly sustained by the Plaintiff be determined, and that he be held liable for only that portion of the total damages in proportion to his liability for the same.

SECOND AFFIRMATIVE DEFENSE

56. Defendant BALBIR SINGH alleges that the injuries, loss and damage of which the Plaintiff complains, if any there were, were proximately caused by the acts and omissions of parties other than this answering defendant.

THIRD AFFIRMATIVE DEFENSE

57. Defendant BALBIR SINGH alleges that the Plaintiff's Complaint is barred by the doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

58. Defendant BALBIR SINGH alleges that, as a result of Plaintiff's action or actions, and/or the action or actions of its authorized representative or representatives, it has waived any and all rights that might otherwise have been available to it under applicable law and is estopped to pursue any claim against this answering defendant.

WHEREFORE, this answering defendant prays for judgment as follows:

- 1) That Plaintiff take nothing by reason of its Complaint;
- 2) That this answering defendant be awarded costs of suit;
- 3) That this answering defendant be awarded their attorneys' fees pursuant to statute;

and

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1 4) That the court grant such other relief as it may deem proper.

2 DATED: August 30, 2004

CHOLAKIAN & ASSOCIATES
A Professional Corporation

3
4 BY:  _____

5 MAURA K. GIBSON

6 Attorneys for Defendant Balbir Singh, individually
7 and dba West Valley Cab Co.
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I, the undersigned, hereby declare that I am a resident of the United States, over the age of eighteen years and not a party to the within action. My business address is 5 Thomas Mellon Circle, Suite 105, San Francisco, California 94134. I am employed in the County of San Francisco where this service occurs. I am readily familiar with my employer's normal business practice for collection and processing of correspondence for mailing with the U.S. Postal Service, and that practice is that correspondence is deposited with the U. S. Postal Service the same day as the day of collection in the ordinary course of business.

On the date set forth below, following ordinary business practice, I served or caused to be served the within:

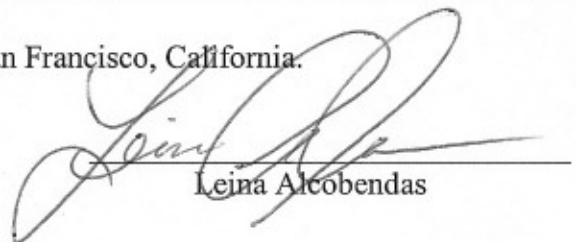
ANSWER OF DEFENDANT BALBIR SINGH, an individual and dba WEST VALLEY CAB; TO PLAINTIFF'S COMPLAINT FOR DECLARATORY RELIEF, FRAUD, RECISSION, or in the alternative, REFORMATION; NEGLIGENCE; and UNFAIR COMPETITION

on the interested parties to this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LISTING

<input checked="" type="checkbox"/>	(BY MAIL) I caused such envelope(s), with postage thereon fully prepaid, to be placed in the United States mail at San Francisco, California.
<input type="checkbox"/>	(BY OVERNIGHT DELIVERY) By placing such sealed envelope, delivery fees paid, in a facility regularly maintained by an overnight delivery service for receipt of such documents. (CCP §1013)
<input type="checkbox"/>	(BY FACSIMILE) By transmitting to a facsimile machine maintained by the recipient at the facsimile machine telephone number as last given by that person.
<input type="checkbox"/>	(BY PERSONAL SERVICE) I caused such envelope(s) to be delivered by hand this date to the offices of the addressee(s). See above.
<input checked="" type="checkbox"/>	(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
<input checked="" type="checkbox"/>	(FEDERAL) I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this court at whose direction this service is made.

Executed on September 1, 2004, at San Francisco, California.


Leina Alcobendas

SERVICE LIST

<p>Mark S. Collins, Esq. Timothy K. Sprinkles, Esq. COLLINS & SCHLOTHAUER 1818 The Alameda San Jose, CA 95126-1731 Tel: (408) 298-5161 Fax: (408) 297-5766 Attorneys for Plaintiffs MICHAEL SHERBURNE and ALICE SHERBURNE</p>	<p>Jeremy Sugerman, Esq. GORDON-CREED, KELLEY, HOLL & SUGERMAN, LLP 530 Jackson Street, 2nd Floor San Francisco, CA 94133 Tel: (415) 421-3100 Fax: (415) 421-3150 Attorneys for Plaintiffs CERTAIN UNDERWRITERS AT LLOYD'S, LONDON</p>
<p>Samuel L. Phillips, Esq. Kristin B. Frazier, Esq. Mark W. Shem, Esq. BORTON PETRINI & CONRON, LLP 99 Almaden Blvd., Ste 700 San Jose, CA 95113 Tel: (408) 535-0870 Fax: (408) 535-0878 Attorneys for DHARAM SINGH</p>	